



**SPECIAL BOARD MEETING
University Park Plaza
Conference Room C – 3rd Floor
2829 University Avenue S. E.
Minneapolis, Minnesota 55414**

Minutes

May 27, 2009

Members Present: Rosemary Kassekert, Public Member
Janna Kovach, LSW
Kenneth Middlebrooks, Public Member, Vice Chair
Carol Payne, LSW
Ruth Richardson, Public Member
Beverly Ryan, LISW
David Sandry, Secretary-Treasurer
Angie Stratig, LICSW
Antonia Wilcoxon, Public Member

Members Absent: Christine Black-Hughes, LICSW
David Hallman, LSW, Chair
Jacqueline Johnson, LICSW
Mary Casey Ladd, LICSW
Tamerlee Ruebke, LSW

Staff Present: Brenda Mammenga, Recording Secretary
Connie Oberle, Office Manager
Kate Zacher-Pate, LSW, Executive Director

Assistant Attorney: Nathan Hart
General

1. PROPOSED AGENDA

Vice Chair Middlebrooks called the meeting to order at 5:30 p.m.; a quorum was present. The Board unanimously approved the agenda.

2. **BOARD CONSIDERATION AND ACTION- ERROR IN LICENSING FEES, Effective Date in 2009 Legislation [Attached]**

Middlebrooks, Board Vice Chair as Acting Chair; Nathan Hart, AAG; Zacher-Pate

Middlebrooks said the focus of this Special Board meeting is in regard to the effective date error for the 2009 fee decrease legislation, and he asked Zacher-Pate to summarize on the issue.

Zacher-Pate said the Board's FY 2010 and FY 2011 budget included a proposal to maintain the current licensing fee rates, with an additional 10% reduction, which was approved and included in Governor Pawlenty's budget bill and the Board's 2009 legislative proposal. This initiative was approved by the Board because the current, temporary fee reduction expires June 30, 2009. Without legislative action to modify licensing fee rates, they would revert back to the higher rates in effect prior to January 1, 2006.

The fee decrease was enacted by the Legislature and ultimately included in Chapter 79. As identified below, Chapter 79 included a repealer of current fee rates, but did not specify an effective date. Because the fee decrease is included in an appropriations bill, the default effective date is July 1, 2009. The Governor signed to approve Chapter 79 on May 14, 2009.

The Board's housekeeping policy provisions were also enacted by the Legislature and ultimately included in Chapter 157. Chapter 157, although limited to policy provisions, also included the repealer for the fee decrease with the other policy repealers. Chapter 157 does specify an effective date "as day after final enactment", which also applies to the repeal of the temporary fee reduction. Because this enactment will be the most recent legislative action, this effective date has the force of law. The Governor signed to approve Chapter 157 on May 21, 2009.

The issue that prompts this special board meeting is that there has been an effective date error for the fee decrease legislation, which is confirmed by Minnesota Management & Budget and Nathan Hart, Assistant Attorney General Representative, as identified below.

Chapter 79, HF 1362, which contains our fee reduction, Article 11, section 12, states: Sec. 12. **REPEALER**. "Minnesota Statutes 2008, section 148D.180, subdivision 8, is repealed." It does not state an effective date of the repealer.

Chapter 157, Article 2, the repealer and effective date are specified in section 14 and section 15: Sec. 14. **REPEALER**. "Minnesota Statutes 2008, sections 148D.062, subdivision 5; 148D.125, subdivision 2; and 148D.180, subdivision 8, are repealed." Sec. 15. **EFFECTIVE DATE**. "This article is effective the day following final enactment."

Current Minnesota Statutes section 148D.180, Subd. 8. **Temporary fee reduction**. "For fiscal years 2006, 2007, 2008, and 2009, the following fee changes are effective" (all specific fees are listed). "This subdivision expires on June 30, 2009."

The outcome is as follows:

1) The current, temporary fee reduction in place now, which expires June 30, 2009, was *"repealed effective the day after final enactment"* (which is the date after signature by the Governor); and

2) The new 10% fee reduction is *"effective July 1, 2009."*

Based on these dates, there is a "gap" of time, from the day after signature by the Governor until July 1, 2009. This causes current Minnesota Statutes section 148D.180 to be in effect with the temporary fee reduction, subdivision 8, being repealed. By force of law, the fees revert back to the higher fees (approximately 20% higher) which were in effect prior to January 1, 2006. The practical effect is that the Board is required by law to collect the higher fees from anyone required to pay a fee during this "gap" period.

Because this was clearly an unintended error, contrary to the legislative intent, and could be demonstrated to be fundamentally unfair to the individuals caught in this gap period, based on consultation with Nathan Hart, AAG, a legally defensible solution is to consider applying the Board's variance provision (see below) to all individuals during this period.

148D.035 VARIANCES. "If the effect of a requirement pursuant to this chapter is unreasonable, impossible to execute, absurd, or would impose an extreme hardship on a licensee, the board may grant a variance if the variance is consistent with promoting and protecting the public health, safety, and welfare. A variance must not be granted for core licensing standards such as substantive educational and examination requirements."

Staff recommends, based on consultation with the Board's Attorney General Representative, that the Board grant a variance, pursuant to Minnesota Statutes section 148D.035, as this action is determined to meet the legislative intent of Minnesota Statutes section 148D.035, does not jeopardize public health, safety and welfare, nor does it affect core educational and examination licensing standards.

A motion was made by Kovach, and seconded by Stratig as follows:

Due to the effective date error in 2009 session law and based on consultation with the Board's Attorney General representative, the Board shall grant a variance, pursuant to Minnesota Statutes section 148D.035, as this action is determined to meet the legislative intent of Minnesota Statutes section 148D.035, does not jeopardize public health, safety and welfare, nor does it affect core educational and examination licensing standards.

The variance would be applied as follows:

During the time period beginning May 22, 2009 through June 30, 2009, the Board shall enforce the fee rates effective January 1, 2006, as specified in Minnesota Statutes section 148D.180, subdivision 8, which were intended to expire July 30, 2009, to all individuals required to pay a fee under Minnesota

Statutes section 148D.180, rather than enforcing the higher fee rates effective prior to January 1, 2006, as specified in Minnesota Statutes section 148D.180.

The motion carried unanimously.

Hart commented that this action is legally defensible. This error was not caused by staff. The repealer was not necessary as the temporary fee decrease in Minnesota Statutes section 148D.180 included a sunset date of June 30, 2009.

3. PUBLIC COMMENT

Alan Ingram, Executive Director, National Association of Social Workers, Minnesota Chapter, was very complimentary of the Board's action and the vision of its predecessors who enacted the variance provision many years ago.

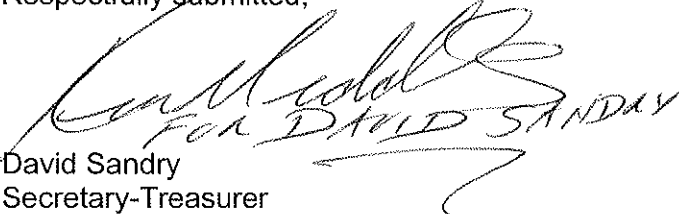
4. OTHER BUSINESS

There was no other business.

5. ADJOURN

The meeting adjourned at 5:50 p.m.

Respectfully submitted,


FOR DAVID SANDRY
David Sandry
Secretary-Treasurer